Office Supreme Court, U.S.
FILED
APR 3 1963
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 891

ANGUS M. MacNEIL,
PETITIONER,

v.

STATE REALTY COMPANY OF BOSTON, INC.,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE LAND COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF RESPONDENT IN OPPOSITION

PHILLIP COWIN
Counsel for Respondent
85 Devonshire St.
Boston 9, Mass.

Blanchard Printing Company, Boston, Mass. — Law Printers

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statutes Involved	4
Statement of the Case	5
Argument	10
Conclusion	14
Appendix	15

Citations

Cases

Bay State Cafe, Inc. v. *Louis R. Cohen*, 336 Mass. 758	9
Bean's Case, 275 Mass. 543	14
Day v. *McClellan*, 236 Mass. 330	14
John, Gdn. v. *Paullin*, 231 U.S. 583	2
McMaster v. *Gould*, 276 U.S. 284	2
In re Angus MacNeil, 266 F.2d 167	9
MacNeil Bros. Co. et al. v. *W. M. Cohen*, 264 F.2d 186	9
MacNeil Bros. Co. et al. v. *State Realty*, 262 F.2d 364	9
Malaguti v. *Rosen*, 262 Mass. 555	12
Maltzman v. *Hertz*, 340 Mass. 626	14
Martin v. *Tapley*, 119 Mass. 116	14
Murphy v. *Bd. of Public Welfare*, 312 Mass. 698	14
Newman v. *Gates*, 204 U.S. 89	2
Tyler v. *Court of Registration*, 175 Mass. 71	11

Statutes

28 U.S.C. sec. 1257	2
General Laws, Mass. (Ter. ed.) c. 185	4
c. 185, sec. 15	14
26A, 27, 41, 42	4

Page

c. 185, sec. 46 11
52 12
54 12
55 12
57 11
70 ..... 3, 5, 12
116 13

Miscellaneous

Rule 2(3) General Rules, Supreme Judicial Court (Mass.) 10

In the
Supreme Court of the United States

OCTOBER TERM, 1962

No. 891

ANGUS M. MacNEIL,
PETITIONER,

v.

STATE REALTY COMPANY OF BOSTON, INC.,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE LAND COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF RESPONDENT IN OPPOSITION

Opinions Below

No opinion was rendered by the Supreme Judicial Court of the Commonwealth of Massachusetts which, on October 15, 1962, on motion of the respondent herein, dismissed the exceptions and the appeal of Angus M. MacNeil from the orders and judgment of the Land Court—the following ground being stated in said motion for dismissal:

"Angus M. MacNeil, the purported appellant and person claiming exceptions, is not a *party* to the Petition or proceeding, and his purported appeals and exceptions are a nullity—this court lacks jurisdiction to entertain the purported "appeals" and "exceptions." Since the purported exceptions and appeal were dismissed and not determined on the merits, no opinion was necessary.

Jurisdiction

It is submitted that this Court has no jurisdiction to review the judgment of the Land Court entered on November 6, 1962. That judgment was not a "final judgment or decree entered by the highest court of a State in which a decision could be had" as required by 28 U.S.C. Section 1257.

Where the highest court of a State does not pass on the merits of a case but dismisses the appeal and exception because its jurisdiction was not invoked in accordance with the laws of the State, no judgment or decree has been rendered which is reviewable by this Court. Furthermore, no Federal right is denied by an Appellate Court of a State in dismissing an appeal or exception from a lower court because its jurisdiction was not invoked in accordance with the laws of the State, and this Court cannot review such a judgment. In legal effect, the case stands as though no appeal or exception had been prosecuted from the judgment rendered by the Land Court.

John, Gdn. v. *Paullin*, 231 U.S. 583
Newman v. *Gates*, 204 U.S. 89, 95
McMaster v. *Gould*, 276 U.S. 284

Petitioner refers to allegations of violations of the Constitution of the United States in the answer and counterclaim which he attempted to file on August 7, 1961 which

he suggests raised Federal questions. Without admitting that a federal question was raised therein, this was not passed on by the Land Court because that Court would not permit the paper to be filed by a person who was not a party to a proceeding between State Realty and the Boston Development Corporation. And the Supreme Judicial Court on February 5, 1962 dismissed MacNeil's exceptions and appeal from the order of the Court refusing to permit such filing—in accordance with the law of Massachusetts. It is submitted, therefore, that there were no Federal questions raised in the issues in the case.

Questions Presented

1. Whether this Court has jurisdiction to review the judgment of the Land Court?

2. Whether there is any federal question of substance involved?

3. Whether, in a proceeding brought under Mass. General Laws, Chap. 185, section 70 by a mortgagee of *registered land*, after foreclosure of the mortgage thereon, and consequent acquisition of title thereto against a corporation to which a certificate of title to said registered land was issued by the Land Court certifying that it is the owner in fee simple of that land subject to said mortgage, for cancellation of the certificate and issuance of a new certificate of title to said mortgagee, and title holder, a person who is not a party to the proceeding, but a stranger to the certificate of title and simply claims that he has an interest in the registered land, have a right as a matter of law under the Constitution of the United States to appear in such a proceeding to contest it and attempt to establish that he is entitled to a certificate of title in his name on the basis of a claimed assignment not appearing of record or in any instrument or deed,—particularly after the Supreme

Judicial Court on February 5, 1962, on dismissal of his appeal and and exception, in effect ruled that he has no such right under Massachusetts law and that he was not a *party aggrieved* and therefore not entitled to appeal under the statutes of the State?

In view of the references by the petitioner to numerous miscellaneous papers and documents from other cases and other proceedings—in an attempt by the petitioner to re-litigate matters already extensively litigated or pending—the Court is cautioned and, we submit, that the only record that the Court should consider on the petition, assuming the Court has jurisdiction, is the certified record beginning with the petition filed by State Realty in the Land Court on *July 19, 1961,* in the case of *State Realty Company of Boston, Inc.* v. *Boston Development Corporation,* Land Court #19735S and #19736S which eventuated in an earlier printed record in the Supreme Judicial Court in Case #12724 and the subsequent printed record in the Court, Case #12855, the motion to dismiss exceptions and appeals in said Cases numbered 12724 and 12855 and the orders and rescripts thereon and the order of the Land Court dated November 5, 1962. It is suggested that the papers or documents in the record to be considered be checked against the certified docket entries beginning July 19, 1961 in the cases numbered as stated. All other papers and references are immaterial and irrelevant.

Statutes Involved

Pertinent sections in Chapter 185 of the General Laws of Massachusetts entitled "The Land Court and Registration of Title to Land".

It is to be observed that sections 26A, 27, 41, and 42 of G.L. c. 185 set forth by the petitioner in his Appendix A, (pgs. 13-15) apply to petitions for the *original registration*

of title to land and for petitions for confirmation of title *without registration*. They do *not* apply to proceedings relating to land which has been registered and certificate of title issued, and more particularly, do not apply to a petition, after foreclosure of a mortgage on registered land, for cancellation of a certificate of title and the issuance of a new certificate (G.L. c. 185 s. 70)

Statement of the Case

1. The Petition in the Land Court filed July 19, 1961— Case No. 19735-68.

The Petitioner, State Realty Company of Boston, Inc., (respondent herein) filed its petition in the Land Court under G.L. Ch. 185 Sec. 70 against the Respondent, Boston Development Corporation, a corporation, for the entry of of a new certificate of title to *registered land*, the certificate of title to which, subject to its mortgage, was in the name of said Boston Development Corporation, and for other relief, in which the petitioner alleged the foreclosure of the mortgage held by it on the land described in the certificate, and that it now had title to the land,

(1) by entry and possession for over three years following an entry and possession by the petitioner on July 26 and 27, 1954 for breach of condition of the mortgage, and

(2) by the entry in the Superior Court on February 27, 1958, of a Final Decree After Rescript from the Supreme Judicial Court dismissing the Bill in equity to redeem from the mortgage brought by MacNeil Bros. Co., a corporation, (the mortgagor and predecessor in title to Boston Development Corporation) against the petitioner, and, concerning which proceeding, a lis pendens was duly registered prior to the issuance of the certificate of title to Boston Development Corp. and was noted thereon.

The said mortgage, certificate of witnesses to the entry and possession by State Realty and Final Decree after Rescript were duly registered and noted on the certificate of title held by the said Respondent. (R.—Case No. 12855, Supreme Judicial Court, p. 1).

2. Proceedings as appearing in earlier case No. 12724 before Supreme Judicial Court.

The Land Court issued an order of Notice to the Respondent, Boston Development Corporation, returnable August 7, 1961, which was served on the said Respondent, (R. Case No. 12724, p. 10). Boston Development Corp. did not appear or contest the proceeding. On the return day, one Angus M. MacNeil, for himself (and not for said respondent) attempted to file an Answer and Counterclaim which the Recorder refused to accept for filing. MacNeil thereupon presented to the Judge of the Land Court "Application of Angus M. MacNeil to the Court for Directions to Recorder to Receive and File Answer and Counterclaim to the Petition" which the Judge denied after hearing arguments from said Angus M. MacNeil (R. Case No. 12724, p. 9). To such denial, Angus M. MacNeil filed an appeal (R. Case No. 12724, p. 11) and his "Bill of Exceptions of Angus M. MacNeil" (R. Case No. 12724, pp. 1-10).

After notice of hearing to MacNeil and a hearing, the Supreme Judicial Court allowed Petitioner's Motion to Dismiss Bill of Exceptions of Angus M. MacNeil and His Appeal and the Rescript filed February 5, 1962, ordered "Exceptions and Appeal of Angus M. MacNeil dismissed" (R. Case No. 12855 p. 5) on the ground, we submit, stated in the Motion that Angus M. MacNeil was not a *party* to the Petition or proceeding and his purported appeal and exceptions were nullities—that this court lacks jurisdiction to entertain his purported appeals and exceptions.

3. Proceedings subsequent to dismissal of exceptions and appeal of Angus M. MacNeil pursuant to Rescript of February 5, 1962 (as appearing in Case No. 12855 of Supreme Judicial Court.)

Thereupon, on February 21, 1962, the Land Court allowed the Petition and entered its order cancelling the Certificate of Title in the name of Boston Development Corporation and ordering a new certificate to be issued to the Petitioner, among other things. (R. Case No. 12855 pp 5-7). Angus M. MacNeil thereupon filed his appeal from such order (R. 7) and claimed an exception thereto (R. 10-11). MacNeil also filed a "Motion of Angus M. MacNeil to Vacate Order of February 21, 1962, and to Restore This Petition to Trial List after said Angus M. MacNeil has been given Ample Opportunity to Appear and Plead", *which was heard on arguments of Angus M. MacNeil and counsel for the Petitioner* and denied by the Land Court on April 9, 1962 (R. 7-9, 10-11). To such denial, MacNeil claimed an exception and filed an appeal (R. 10-11). MacNeil also claimed an exception to the refusal by the Land Court, in the exercise of its discretion, to appoint a stenographer to record the hearing on said motion (R. 11). The Land Court allowed MacNeil's Substituted and Consolidated Bill of Exceptions.

After notice of a hearing to MacNeil and a hearing, the Supreme Judicial Court allowed "Petitioner's Motion to Dismiss Substituted and Consolidated Bill of Exceptions of Angus M. MacNeil and his Appeals" on October 15, 1962 on the ground, we submit, stated in the motion, to wit:— "Angus M. MacNeil, the purported appellant and person claiming exceptions, is not a *party* to the Petition or proceeding, and his purported appeals and exceptions are a nullity—this Court lacks jurisdiction to entertain the purported "appeals" and "exceptions." On the same day the

Court issued its Rescript "Exceptions and Appeals of Angus M. MacNeil Dismissed." Thereupon the Land Court entered the order or judgment dated November 5, 1962 for a new certificate of title appearing in Appendix B of the Petition (p. 18) concerning which the Petition for Writ of Certiorari was filed.

4. The unsubstantiated allegations of Mr. MacNeil on page 2 of the Petition that "no opportunity was given to your Petitioner to appear or to be heard before the Supreme Judicial Court" and on page 8 thereof that no hearing was had in said Court on the motion to dismiss the exceptions and appeals of A. M. MacNeil (presumably in case no 12855 in that Court) *are not in accordance with the facts.* See certified copy of the last mentioned motion transmitted herewith and Clerk's notation on backer: "Argued Monday Oct. 1/62 on briefs of both parties" and affidavits of the Clerk of the said Court and Phillip Cowin transmitted herewith and printed in Appendix A hereof.

Except as stated herein, and except insofar as the statements herein are concurred in by the Petitioner in his Statement in the Petition for Writ, and except as affirmatively substantiated by the certified record in the case culminating in the order of the Land Court of November 5, 1962 referred to under "Question Presented" above, the Respondent denies the allegations, arguments and conclusions made in the Statement and Reasons for Granting Writ in said Petition. It would serve no useful purpose to attempt to specifically point out the numerous inaccuracies, distortions of facts, misstatements, impertinencies, irrelevancies, omissions, and references to interlocutory decrees in cases and proceedings that are not material to the matter in issue. Petitioner is attempting to relitigate before this Court the 50 odd cases he and his controlled corporations

brought against State Realty and persons which he claimed were associated with it.

In passing, counsel should like to call the court's attention to the following quotations from appellate courts referring to the Petitioner MacNeil:

"We repeat what we had occasion to say in *MacNeil Bros. Company* v. *Forte*, 253 F.2d 500 (1958):

> 'Appellant is represented by Angus M. MacNeil, Esq. MacNeil is a chronic litigant in state and federal courts, either in his own name or on behalf of corporations he controls. Our patience with him has just about become exhausted because of his repeated wasting of our time in defaults in cases which ought to be recognized as hopeless by any competent lawyer.' "

MacNeil Bros. Co., et als v. *State Realty Co. of Boston, Inc.*, 262 F.2d 364, 365, CA 1, 1959

The quotation was repeated for a third time in the case of *MacNeil Bros. Co., et als* v. *Wallace M. Cohen*, 264 F.2d 186, 188 CA 1, 1959.

We suggest that the Court read the illuminating opinion in the case *In re Angus McMacNeil* 266 F.2d 167 (CA 1, 1959) which resulted in his disbarment from the practice of law in the Court of Appeals for the First Circuit following his disbarment from practice by the Supreme Judicial Court of Massachusetts. The opinion highlights Mr. MacNeil's litigious proclivities (Page 173) and refers to him as an "individual who sometimes seemed to be wholly irresponsible." (Page 169)

And from the Rescript Without Opinion by the full court of the Supreme Judicial Court of Massachusetts, in the case of *Bay State Cafe, Inc.* v. *Louis R. Cohen*, (in

which Mr. MacNeil represented the plaintiff) 336 Mass. 758, 145 N.E. 2d 683

> "October 31, 1957. This bill of complaint filed in the Supreme Judicial Court, Suffolk County, is confused, illiterate and incomprehensible. The filing of this bill and the prosecution of these frivolous appeals from interlocutory decrees of a single justice sustaining demurrers to the bill of complaint and from a final decree dismissing the bill constitutes an imposition on the court . . ."

The foregoing quotations and citations are not in the pertinent certified record in this case, of course. We feel, however, that the Court should have this information in view of our challenges to the accuracy of the statements of the Petitioner. They, together with Rule 2 (3) of the General Rules of the Supreme Judicial Court hereinafter quoted, will serve to explain why that Court insisted that he argue before it only through counsel in a reported instance.

> "(3) A corporation or association shall not be represented under G.L. c. 221 sec. 46, by a disbarred attorney."

Argument

Title to land in Massachusetts may be registered under the so-called Torrens system. The present statute (originally enacted as St. 1898 c. 562) providing a system for the registration of land titles, contains provisions relative to the original registration of land (sec. 26-45) and also provisions relating to transfers or dealings with the land subsequent to the original registration thereof. An

assurance fund, with any deficiency paid by the State, is provided for to pay claims of a person who sustains loss or damage or is deprived of land or an interest therein, after original registration, by the registration of another as the owner of land through fraud, error, mistake, etc. (sec. 99-106.)

The pertinent provisions of the G.L. c. 185 that bear on subsequent dealings are sections 46 and 57, the material portions of which are as follows:

Section 46. "Every petitioner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on the certificate"—and certain stated encumbrances for taxes, etc. not herein material.

Section 57. "An owner of registered land may convey, mortgage, lease, charge or otherwise deal with it as fully as if it had not been registered .... But no deed, mortgage or other voluntary instrument, except a will and a lease for a term not exceeding seven years, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the recorder or assistant recorder to make registration. The act of registration only shall be the operative act to convey or affect the land...."

It was stated by Holmes, C. J. in *Tyler* v. *Court of Registration* (1900) 55 N.E. 812, 175 Mass. 71 at page 81 in speaking of transfers or dealings subsequent to the original registration, "It must be remembered that at all later stages no one can have a claim which does not appear on

the face of the registry. The only rights are registered rights, . . ." In *Malaguti* v. *Rosen*, (1928) 160 N.E. 532, 262 Mass. 555 at page 568 it was said, "Persons dealing with the land in the future (after original registration) may rely on the files at the registry and the interests of no one require changes in the records."

Other pertinent sections of c. 185 follow:

Section 52. "The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land and binding upon the petitioner and his successors in title that the land shall be and forever remain registered land and subject to this chapter and all acts in amendment thereof."

Section 54. "The original certificate in the registration book, any copy thereof duly certified under the signature of the recorder or an assistant recorder and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all courts of the commonwealth, and shall be conclusive as to all matters contained therein, except as otherwise provided in this chapter."

Section 55. Every certificate of title shall set forth the names of all the persons whose estates make up the estate in fee simple in the whole land, and duplicate certificates may be issued to each person, but the recorder or assistant recorder shall note in the registration book on each duplicate, to whom such duplicate was issued."

Section 70. "*Mortgages of registered land may be foreclosed like mortgages or unregistered land; but in case of foreclosure by entry and possession, the certificate of entry required by section two of chapter two hundred*

and forty-four shall be filed and registered by an assistant recorder within thirty days after the entry, in lieu of recording. After possession has been obtained by the mortgagee or his assigns, by entry or by action, and has continued for the time required by law to complete the foreclosure, he or his assigns may petition the land court for the entry of a new certificate, and the court, after notice to all parties in interest, shall have jurisdiction to hear the case and may order the entry of a new certificate on such terms as equity and justice may require . . ."

Section 116. "All notices required by or given under this chapter by the recorder or any assistant recorder, after original registration, shall be mailed to the person to be notified at the residence and post office address stated in the certificate of title, or in any registered instrument under which he claims an interest, in the office of the recorder or assistant recorder, relating to the parcel of land in question.

All notices and citations directed by special order of the court under this chapter, after original registration, may be served in the manner above stated, and the certificate of the recorder shall be conclusive proof of such service; but the court may in any case order different or further service, by publication or otherwise."

Since Boston Development Corporation was named as the holder of the certificate of title referred to in the petition filed in the Land Court and the order of notice was issued by the Land Court to, and served on, Boston Development Corporation (which was the only party in interest as determined by the Land Court) the individual, Angus M. MacNeil, was not a party to the proceeding, he was merely an attempted interloper.

On familiar principles, the right to appeal or take an exception is statutory and can be exercised only when and

as authorized by statute. Only a *party* to an action or suit in the Land Court who is aggrieved can appeal or take an exception to the Supreme Judicial Court.

> General Laws C. 185 s. 15— ". . . Questions of law arising in the Land Court on any decision or decree may be taken by any *party* aggrieved directly to the Supreme Judicial Court for revision in the same manner in which questions of law are taken to that court from the superior court." (emphasis supplied.)

A purported appeal or exception taken by a person who is not a party to the Petition or proceeding is a nullity.

> *Martin* v. *Tapley*, 119 Mass. 116, 120-121
> See *Bean's Case*, 275 Mass. 543, 545
> See *Maltzman v. Hertz*, 340 Mass. 626, 628 (end)

A matter on the files and yet not properly before the court is dismissed and not considered on the merits.

> *Day* v. *McClellan*, 236 Mass. 330, 331
> See *Murphy* v. *Board of Public Welfare*, 312 Mass. 698

Conclusion

For the foregoing reasons, the petition for Writ of Certioriari should be dismissed for want of jurisdiction or, in the alternative, denied.

PHILLIP COWIN
Counsel for Respondent

Appendix A

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 891

ANGUS M. MACNEIL

v.

STATE REALTY COMPANY OF BOSTON, INC.

AFFIDAVIT OF CLERK OF SUPREME JUDICIAL COURT

I, Richard A. McLaughlin, Clerk of the Supreme Judicial Court of the Commonwealth of Massachusetts hereby make oath and state that I have examined the papers on file in the Supreme Judicial Court in the Case of State Realty Company of Boston, Inc. v. Boston Development Corporation, Docket No. 12855; that among the papers in the files therein is

(1) a letter from Angus M. MacNeil dated October 3, 1962 addressed to the Supreme Judicial Court for the Commonwealth, referring to the mailing under separate cover of a memorandum in opposition to the Motion to Dismiss;

(2) a ten page typewritten brief entitled "Memorandum of Angus M. MacNeil in opposition to motion to dismiss Substituted and Consolidated Bill of Exceptions of Angus M. MacNeil and his appeals."

(3) a letter from Angus M. MacNeil dated October 6, 1962 addressed to Hon. Raymond S. Wilkins, Chief Justice, Supreme Judicial Court, and

(4) Certificate of Notice by Phillip Cowin dated September 24, 1962.

(s) RICHARD A. McLAUGHLIN
March 26, 1963

Commonwealth of Massachusetts
Suffolk, ss.

Subscribed and sworn to

Before me (s) FREDERICK J. QUINLAN
Notary Public
(Notarial Seal)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 891

ANGUS M. MACNEIL

v.

STATE REALTY COMPANY OF BOSTON, INC.

AFFIDAVIT OF PHILLIP COWIN

I, Phillip Cowin, make oath and state that I was the attorney for State Realty Company of Boston, Inc. in the case of State Realty Company of Boston, Inc. v. Boston Development Corporation, No. 12855 in the Supreme Judicial Court for Massachusetts; that I was present before the full Court on October 1, 1962 when the "Petitioner's Motion to Dismiss Substituted and Consolidated Bill of Exceptions of Angus M. MacNeil and his Appeals" in said case was called for hearing shortly after 9:30 A.M.; that on September 24, 1962 I mailed due notice of such hearing to Angus M. MacNeil and duly filed a Certificate of Notice

thereof; that Angus M. MacNeil did not respond when the case was called whereupon I submitted on my brief; that as I was leaving the court house about 15 minutes later I observed Mr. MacNeil on Pemberton Square approaching the court house; that later on that day I learned from Mr. Quinlan, the then clerk, that the Court gave Mr. MacNeil an opportunity to submit a brief; that within a few days thereafter and before the Court entered its rescript (of October 15, 1962), I received from Mr. MacNeil copies of papers (1), (2) and (3) referred to in the Affidavit of Richard A. McLaughlin, Clerk.

I further state that on January 26, 1962 I mailed a notice, postage prepaid to Angus M. MacNeil, that I would present for allowance in the Supreme Judicial Court on February 5, 1962 "Petitioner's Motion to Dismiss Bill of Exceptions of Angus M. MacNeil and his Appeal" in case No. 12724 in that Court. I received from Mr. MacNeil on January 29, 1962 a copy of a letter from him to the Chief Justice of that Court dated January 28, 1962 acknowledging receipt of said notice and copy of the motion but requesting a continuance of the hearing to March. Neither Mr. MacNeil nor anyone in his behalf appeared when the motion was called for hearing on February 5, 1962.

(s) PHILLIP COWIN
March 26, 1963

Commonwealth of Massachusetts
Suffolk, ss.

Subscribed and sworn to

Before me MYER L. ORLOV
Notary Public
(Notarial Seal)